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HEWLETT-PACKARD COMPANY
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EXAMINER

RUTTEN, JAMES D

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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09955764	9/19/2001	LI ET AL.	10007965

EXAMINER

JAMES RUTTEN

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Commissioner for Patents

The Board of Patent Appeals and Interferences (BPAI) filed an order remanding the appeal to the examiner on 7/18/08. In the order, the BPAI pointed out that "[a]t least one of claims 1-35 of the instant application are set forth as method claims that may not fall with one of the four statutory categories of invention recited in 35 U.S.C. § 101." This was presented in the context of the 5/15/08 memo from Deputy Commissioner for Patent Examining Policy, John J. Love, entitled "Clarification of 'Processes' under 35 U.S.C. § 101." In the memo, Deputy Commissioner Love provided guidance regarding interpretation of 35 U.S.C. § 101 in view of the Court of Appeals for the Federal Circuit in *In re Bilski*, Appeal No. 2007-1130. The guidance is as follows:

"Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. If neither of these requirements is met by the claim, the method is not a patent eligible process under § 101 and should be rejected as being directed to non-statutory subject matter."

Claim 1 is directed to "[a] monitoring method for a component-based software system operating over one or more processing devices..." Further, the body of the claim requires "transmitting the global causal identifier" to a remote system, and "execution of said second software component within said component-based software system." These limitations coupled with the recitation of "one or more processing devices" appears to tie the "monitoring method" with a particular apparatus. Paragraphs [0003], [0025], [0037] and [0038] of the originally filed specification support this interpretation through description of processes executing on "processors/computer", "computer devices," "machines," and "devices," respectively. No portion of the originally filed specification was found which uses these terms contrary to their plain meaning as physical, "hardware" devices. Therefore, test 1 as provided by Deputy Commissioner Love is satisfied, and the claim is interpreted as providing a patent eligible process which is tied to a particular apparatus in accordance with the 5/15/08 memo.

Claim 29 is directed to "[a] monitoring method for a component-based software system operating over one or more processing devices..." and contains similar limitations to those noted in the above discussion of claim 1. This claim is considered to provide patent eligible process for the same reasons noted above.

Claims 2-28, and 30-35 are dependent upon claims 1 and 29, respectively, and thereby provide a patent eligible process at least by virtue of being dependent upon a statutory parent claim.

/Tuan Q. Dam/
Supervisory Patent Examiner, Art Unit 2192

/J. Derek Rutten/
Examiner, Art Unit 2192